

PT 98-67

Tax Type: **PROPERTY TAX**

Issue: **Religious Ownership/Use**

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE CATHOLIC
BISHOP OF CHICAGO
(ARCHDIOCESE OF CHICAGO),
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

No. 94-49-0429

**Real Estate Tax Exemption for
1994 Assessment Year**

P.I.N: 06-29-100-036

Lake County Parcel

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This proceeding raises the issue of whether real estate identified by Lake County Parcel Index Number 06-29-100-036 (hereinafter the "subject property" or the "subject parcel") qualifies for exemption from 1994 real estate taxes under 35 ILCS 200/15-40,¹ wherein "[a]ll property used exclusively for religious purposes" is exempted from real estate taxation.

The controversy arises as follows:

1. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code, 35 ILCS 200/1 *et seq.*

The Catholic Bishop of Chicago (hereinafter the "applicant" or the "Archdiocese") filed an Application for Property Tax Exemption with the Lake County Board of Review (hereinafter the "Board") on December 7, 1994 (Dept. Group Ex. No. 1, Doc. A). The Board reviewed the application and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be granted. (Dept. Group Ex. No. 1, Doc. D).

The Department rejected this recommendation by issuing a determination dated January 24, 1997. Said determination found that applicant did not provide sufficient evidence of ownership. (Dept. Group Ex. No. 2, Doc. B). Applicant filed a timely request for hearing on April 25, 1996 (Dept. Group Ex. No. 3, Doc. B) and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the subject property be exempt from 1994 real estate taxes.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that the applicant did not provide sufficient proof of ownership, are established by the admission into evidence of Dept. Group Ex. No. 2, Doc. B.
2. Applicant is a body politic and corporation sole [sic] created by a corporate charter issued by the General Assembly on February 20, 1801. Applicant Ex. No. 1-A.
3. In substance, the corporate charter provides for creation of a corporation sole that, *inter alia*, is vested with authority to acquire, convey and mortgage property, or hold same in trust, in the name of the Catholic Bishop of Chicago and his successors in interest, provided however, that any property held in trust must be

used for no end other than the charitable, religious, literary or burial ground purposes set forth in the Act. *Id.*

4. The subject property is located at 114 N. Lincoln, Round Lake, IL 60073. It is situated in the midst of a large complex that includes St. Joseph's Church, (hereinafter the "church"), St. Joseph's School (hereinafter the "school") and a convent for nuns who teach at the school. Dept. Group Ex. No. 1, Docs. D, E.
5. Most of the school is situated on real estate identified by Lake County Parcel Index Number 06-29-112-005, a property found to be exempt in Departmental Docket Number 63-386. This exemption remained in effect throughout the entire 1994 assessment year. Dept. Group Ex. No. 1, Doc. E; Applicant Ex. No. 5; Administrative Notice; Tr. pp. 42, 46-47.
6. A small portion of an addition to the school is located on the subject property. This addition is part of a large rectangular structure that runs from the northeastern border of parcel 06-29-112-005 and continues onto the northwestern portion of the subject property. Dept. Group Ex. No. 1, Doc. E; Applicant Ex. No. 6.
7. The subject property, which applicant acquired via a warranty deed dated December 22, 1930, also contains a parking area used by the school and the church during 1994. Applicant Ex. Nos. 4,6; Tr. pp. 40-41.
8. The parcel additionally features a grassy play area used by children attending the school facility. *Id.*

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1994 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that said property was not in exempt use throughout the tax year in question, as required by 35 ILCS 200/15-40, should be reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 *et seq.* The provisions of that statute that govern disposition of the

instant proceeding are found in Section 200/15-40, wherein "[a]ll property *used* exclusively for religious purposes" is exempted from real estate taxation. (Emphasis added).

Prior to 1909, it was a requirement for the exemption of property used for religious purposes that it be owned by the organization that claimed the exemption. Since that time however, a statutory amendment (which the emphasized language demonstrates is still in effect) eliminated that requirement in cases that do not involve parsonages. The test of exemption then became (and, with the exemption of parsonages, still remains) use and not ownership. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). *See also*, American Nat'l Bank and Trust Co. v. Dep't of Revenue, 242 Ill. App.3d 716 (2nd Dist. 1993).

In this case, the Department's denial was based solely on an apparent failure of proof as to ownership. This result is technically incorrect, at least with respect to those areas of the subject property used for part of the school addition and the playground. These areas need not be in exempt ownership, for they were not used as parsonages. Rather, applicant need only establish that said areas were "used exclusively for religious purposes," within the meaning of Section 200/15-40, during 1994.

The legal definition of "religious purpose," originally articulated in People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession 249 Ill. 132 (1911) (hereinafter "McCullough"), is as follows:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

McCullough at 136-137. (Emphasis added).

The portion of the subject property used for part of the school improvement clearly falls within this definition, as it was inextricably attached to the tax-exempt remainder of that same

improvement. The playground, although not physically attached to the school improvement, was nonetheless exclusively used by children attending that facility. Therefore, at minimum, the Department should have exempted those portions of the subject property which contained part of the school improvement and the playground.

The above conclusions do not address the parking area because that portion of the subject property falls within Section 200/15-125 of the Property Tax Code, which states that:

Parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this Code and *owned by any* school district, non-profit hospital, or *religious* or charitable institutions which meets the qualifications for exemption, are exempt [from real estate taxation].

35 **ILCS** 200/15-125 (Emphasis added).

The plain language this statute imposes an ownership requirement that applicant satisfied by submitting a deed (Applicant Ex. No. 4) establishing that the Archdiocese owned the subject property since December 22, 1930. Furthermore, the remaining evidence of record clearly establishes that the parking area furthered exempt uses associated with the adjacent church and religious school throughout 1994. *See, McCullough, supra*. Consequently, I conclude that this area was in exempt use, as required by 200/15-40 and 200/15-125, during that time. Therefore, the Department's determination denying the parking area and all other components of the subject property exemption from 1994 real estate taxes under 35 **ILCS** 200/15-40 should be reversed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that the entirety of Lake County Parcel Index Number 06-29-100-036 be exempt from 1994 real estate taxes.

November 23, 1998

Date

Alan I. Marcus
Administrative Law Judge

